October 6, 2006

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Dear members of the Air Conservation Commission:

You are currently considering amendments to the odor rules as they apply to Class 1A Confined Animal Feeding Operations, ("CAFOs"). Your odor rules have been a frequent litigation target. We prevailed in defeating the 1999 challenges filed by an industry group in both 1999 and 2003.

While this office supports the amendments now proposed, we offer these additional comments with a view of moving towards a better overall system for addressing odor problems in this state. In our view, the current rules simply do not go far enough to protect the state's air resources, guard the health of our citizens, and prevent nuisances that can make living conditions near odor sources utterly unbearable. The Attorney General therefore encourages the Commission to establish a forum for a wider discussion of how well or poorly the current odor control rules are working.

The failure of the current odor regime can best be illustrated by events surrounding the RES facility in Carthage, Missouri. Intolerable odors were emitted for an extended period of time and your staff monitored the facility on a daily basis for many months. On frequent occasions, the odor was wholly unacceptable but did not reach the threshold necessary to issue an NOV. But eventually six (6) NOV's were issued, a nuisance suit filed by this office and the City of Carthage and the DNR issued (and the Company appealed) an administrative order

shutting down the facility. At the end of these processes all would agree that the Company has, to date, taken all reasonable and necessary steps to address and eliminate its odorous emissions. While we are pleased with this result--the process certainly has not been a model of measured and efficient resource management.

There are numerous other examples around the state where offensive odors have been suffered by the public, but the odors do not reach the 7:1 threshold at the time of staff inspections. The current system also places your staff in a nearly impossible situation of having to frequently defend the conclusion that it cannot act to address what all would agree are thoroughly offensive and yet preventable odors.

This office has and will continue to aggressively pursue public nuisance claims against those who would continually omit odors, but the process can be improved.

Department records suggest the vast majority of nuisance odor complaints do not result in the Department issuing an NOV. Missourians are not by nature complainers--we are used to and we tolerate unpleasant aromas if we understand them to be unpreventable or temporary. But once the Department begins receiving vast numbers of legitimate complaints--complaints that are confirmed by your staff--it is time to act.

The State's system of odor management can be made more effective, fair and enforceable by:

1. Establishing a more protective odor tolerance threshold than 7:1;

2. Assuming a firm violated the standard with some pre-established frequency (i.e. more than once a month, four times per year, etc.), it would be required to do a comprehensive odor source identification and analysis and submit same to DNR.

3. Once the specific odor sources were identified--the offending company would then be required to submit an analysis of reasonable treatment alternatives in accordance with an established technical and regulatory standard (such as Reasonably Available Control Technology, ("RACT") or Best Available Control Technology,("BACT") etc).

4. If there were treatment technologies or process changes which met the chosen standard, the company would be required to install whatever device or process change as indicated pursuant to a reasonable schedule. Of course, entities would have the right to appeal any determinations by the Department to this commission and the courts as any final agency decisions.

The above process would essentially operate separately from the current enforcement standards. That is, no penalties or NOV's would be implicated by the violation of this lower threshold - only the obligation to evaluate and implement solutions would be triggered.

We believe the Work Group process instituted by the Commission in 1999 to establish the CAFO odor rule was beneficial and we would volunteer to participate in a similar effort to implement odor rule improvements. Of course, industrial, agricultural and public advocacy groups should play a role in this process and your staff should coordinate and provide support to the group's efforts. The Work Group should also address any other unworkable or impractical features of the existing rules.

Of course, Class 1A agricultural facilities may well need to be treated somewhat differently than industrial sources, (as do the existing rules) and urban and rural areas may merit differing thresholds and standards. We seek these changes in accordance with our Good Neighbor Policy-that large farm operations should not diminish their neighbors quality of life and that farm lands should be improved from generation to generation.

There have been wholesale advances in odor control technologies in recent years...lets put these available protections in place in prompt but orderly fashion without waiting until the situation merits enforcement.

We would appreciate the opportunity to assist you and your staff in this important endeavor and would look forward to the opportunity to serve on or with the Work Group.

Sincerely,

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